

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

Office of Financial and Insurance Regulation

Petitioner

v

Case No. 09-734-L

Roger Wayne Pennington
Respondent

For the Petitioner:

Marlon F. Roberts
Office of Financial and Insurance Regulation
P.O. Box 30220
Lansing, MI 48909-7720

For the Respondent:

Roger Wayne Pennington
1737 Sherfield Place
Southfield, MI 48075

Issued and entered
this 23rd day of July 2009
by Ken Ross
Commissioner

FINAL DECISION

BACKGROUND

On March 23, 2009, Chief Deputy Commissioner Stephen R. Hilker issued an Order for Hearing and Order to Respond in this case. The Order for Hearing set forth detailed allegations that Respondent had violated provisions of the Michigan Insurance Code (MCL 500.100, *et seq.*) by being convicted of a felony and by failing to report the conviction to the Commissioner.

A hearing was held on May 11, 2009. The Administrative Law Judge issued a Proposal for Decision (PFD) dated May 26, 2009. Petitioner filed exceptions to the ALJ's proposed sanctions. Respondent Pennington did not file exceptions.

In addition to the considerations above, it is important that the Respondent did not file exceptions to the Proposal for Decision. Michigan courts have long recognized that the failure to

file exceptions constitutes a waiver of any objections not raised. *Attorney General v. Public Service Comm* 136 Mich App 52 (1984).

ANALYSIS

The factual findings in the PFD are in accordance with the preponderance of the evidence and the conclusions of law are supported by reasoned opinion. Those findings and conclusions are adopted. The PFD is attached and made part of this final decision.

While the findings of fact and conclusions of law in the PFD are accepted, the Commissioner declines to accept the ALJ's recommended sanction in this matter.

Section 1239(1)(f) of the Insurance Code, MCL 500.1239(1)(f), provides:

In addition to any other powers under this act, the commissioner may place on probation, suspend, revoke, or refuse to issue an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions for any 1 or more of the following causes:

* * *

(f) Having been convicted of a felony.

Section 1247(2) of the Insurance Code, MCL 500.1247(2), provides:

Within 30 days after the initial pretrial hearing date, an insurance producer shall report to the commissioner any criminal prosecution of the insurance producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

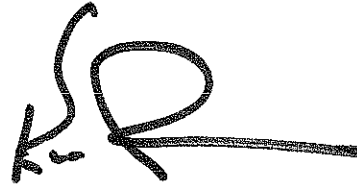
Respondent was convicted of selling a counterfeit certificate of insurance, a violation of section 329(1) of the Motor Vehicle Code, MCL 257.329(1). Violation of this statute is a felony. Respondent also failed to report his conviction to the Commissioner as required by section 1247(2) of the Insurance Code.

Respondent's conduct demonstrates a failure to serve the public in an honest and trustworthy manner. Such conduct warrants the imposition of the most severe licensing sanction.

The Commissioner concludes that Respondent is not qualified to hold a Michigan insurance
producer license.

ORDER

Therefore, it is ORDERED that Respondent's resident insurance producer license is
revoked.

A handwritten signature in black ink, appearing to be 'K. Ross', written over a horizontal line.

Ken Ross
Commissioner

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of

Docket No. 2009-563*

Office of Financial and Insurance
Regulation,
Petitioner

Agency No. 09-734-L

v

Agency: Office of Financial And
Insurance Regulation

Roger Wayne Pennington,
Respondent

Case Type: Intent to Deny
Refusal to License

_____/

Issued and entered
this 26 day of May, 2009
by James L. Karpen
Administrative Law Judge

AMENDED PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Appearances: Marlon F. Roberts, Attorney at Law, appeared on behalf of Petitioner, Office of Financial and Insurance Regulation. Respondent, Roger Wayne Pennington appeared *pro se*.

This case stems from a March 23, 2009 Complaint which alleges that Respondent violated provisions of the Michigan Insurance Code of 1956 (Code), 1956 PA 218, as amended, MCL 500.100 et seq. The hearing was held as scheduled on May 11, 2009.

*Amended as to the docket number only.

ISSUES AND APPLICABLE LAW

The issue in this case is whether Respondent violated the provisions of the Code as alleged in the Complaint. The Code sections at issue are as follows:

Section 1239 of the Code, MCL 500.1239, states:

(1) In addition to any other powers under this act, the commissioner may place on probation, suspend, revoke, or refuse to issue an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions for any 1 or more of the following causes:

- (a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.
- (b) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.
- (c) Obtaining or attempting to obtain a license through misrepresentation or fraud.
- (d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.
- (e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.
- (f) Having been convicted of a felony.
- (g) Having admitted or been found to have committed any insurance unfair trade practice or fraud.
- (h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.
- (i) Having an insurance producer license or its equivalent denied, suspended, or revoked in any other state, province, district, or territory.

- (j) Forging another's name to an application for insurance or to any document related to an insurance transaction.
 - (k) Improperly using notes or any other reference material to complete an examination for an insurance license.
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- (l) Knowingly accepting insurance business from an individual who is not licensed.
 - (m) Failing to comply with an administrative or court order imposing a child support obligation.
 - (n) Failing to pay the single business tax or the Michigan business tax or comply with any administrative or court order directing payment of the single business tax or the Michigan business tax.
- (2) Before the commissioner denies an application for a license, the commissioner shall notify in writing the applicant or licensee of the denial and of the reason for the denial. Not later than 30 days after this written denial, the applicant or licensee may make written demand upon the commissioner for a hearing before the commissioner to determine the reasonableness of the commissioner's action. A hearing under this subsection shall be held pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
- (3) The license of a business entity may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by 1 or more of the partners, officers, or managers acting on behalf of the partnership or corporation and the violation was neither reported to the commissioner nor corrective action taken.
- (4) In addition to or in lieu of any applicable denial, suspension, or revocation of a license, a person, after hearing, be subject to a civil fine under section 1244.
- (5) In addition to the penalties under this section, the commissioner may enforce the provisions of and impose any penalty or remedy authorized by this act against any person who is under investigation for or charged with a violation of this act even if the person's license or registration has been surrendered or has lapsed by operation of law.

Section 1244 of the Code, MCL 500.1244, states:

- (1) If the commissioner finds that a person has violated this chapter, after an opportunity for a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the commissioner shall reduce the findings and decision to writing and shall issue and cause to be served upon the person charged with violation a copy of the findings and an order requiring the person to cease and desist from the violation. In addition, the commissioner may order any of the following:
 - (a) Payment of a civil fine of not more than \$500.00 for each violation. However, if the person knew or reasonably should have known that he or she was in violation of this chapter, the commissioner may order the payment of a civil fine of not more than \$2,500.00 for each violation. An order of the commissioner under this subsection shall not require the payment of civil fines exceeding \$25,000.00. A fine collected under this subdivision shall be turned over to the state treasurer and credited to the general fund of the state.
 - (b) A refund of any overcharges.
 - (c) That restitution be made to the insured or other claimant to cover incurred losses, damages, or other harm attributable to the acts of the person found to be in violation of this chapter.
 - (d) The suspension or revocation of the person's license.
- (2) The commissioner may by order, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, an order issued under this section, if in the opinion of the commissioner conditions of fact or of law have changed to require that action, or if the public interest requires that action.
- (3) If a person knowingly violates a cease and desist order under this chapter and has been given notice and an opportunity for a hearing held pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the commissioner may order a civil fine of not more than \$10,000.00 for each violation or a suspension or revocation of the person's license, or both. An order issued by the commissioner pursuant to this subsection shall not require the payment of civil fines exceeding \$50,000.00. A fine collected under this subsection

shall be turned over to the state treasurer and credited to the general fund of the state.

- (4) The commissioner may apply to the circuit court of Ingham County for an order of the court enjoining a violation of this chapter.

Section 1247(2) of the Code, MCL 500.1247(2), states:

Within 30 days after the initial pretrial hearing date, an insurance producer shall report to the commissioner any criminal prosecution of the insurance producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

SUMMARY OF THE EVIDENCE

Petitioner introduced Exhibit 1, a judgment of sentence from Oakland County Circuit Court which shows that on February 2, 2007 Respondent pled *nolo contendere* to one count of selling a false or counterfeit insurance certificate (a felony) in violation of MCL 257.329 (1).

Petitioner called Respondent to testify. Respondent stated that he currently holds an insurance producer's license under the Code. He said he had been in the insurance business for 30 years and had never been the subject of a complaint prior to the present case.

Respondent said that a long time client referred a man who wanted to purchase auto insurance for his car and his sister's car. The new client did not have enough money to cover the down payment on both policies. Respondent accepted partial payment and gave the client the two insurance certificates. The client promised to return the next day with the remainder of the down payment, approximately \$100. The new client never returned with the money. It later appeared that the new client was involved in stolen automobiles. Respondent said he had never done anything like this before.

Respondent kept the down payment but did forward the new client's information to the insurer because he did not have the full amount of the down payment for the two policies.

Respondent admitted his conviction. Respondent said he did not report his conviction to Petitioner because he did not know he was required to do so.

FINDINGS OF FACT

1. Respondent Roger Wayne Pennington currently holds an insurance producer's license under the Code.
2. On February 2, 2007 Respondent was convicted in Oakland County Circuit Court of one count of selling a false or counterfeit insurance certificate, a felony, in violation of MCL 257.329(1).
3. Respondent failed to report his felony conviction to Petitioner.

CONCLUSIONS OF LAW

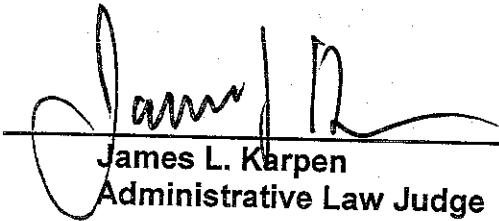
It is evident from the foregoing that Petitioner has established by a preponderance of the evidence that due to the felony conviction Respondent violated Section 1239(1) of the Code. By failing to report his conviction to Petitioner, Respondent violated Section 1247(2) of the Code.

PROPOSED DECISION

I recommend that Respondent's insurance producer's license be suspended for six months and a \$5,000.00 civil fine be imposed on Respondent.

EXCEPTIONS

If a party chooses to file Exceptions to the Proposal for Decision, the Exceptions must be filed within 30 days of the Decision. All Exceptions must be filed with the **Office of Financial and Insurance Services**, Division of Securities, Ottawa State Office Building, 611 W. Ottawa, 3rd Floor, P.O. Box 30220, Lansing, Michigan 48909, Attention: Dawn Kobus. Exceptions must be served on all parties.


James L. Karpen
Administrative Law Judge